



August 10, 2005

By ECFS (<http://www.fcc.gov/cgb/ecfs/>)

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: WC Docket 05-196 — **SUBSCRIBER NOTIFICATION REPORT**

Dear Ms. Dortch:

On behalf of Time Warner Cable,¹ I am writing in connection with the Enforcement Bureau's Public Notice released in this docket on July 26, 2005.²

On June 3, 2005, the Commission released an *Order* requiring providers of "Interconnected VoIP Service" to advise all subscribers of certain E911-related information.³ In particular, the Commission stated: "[B]y the effective date of this Order, we require that all providers of interconnected VoIP service specifically advise every subscriber, both new and existing, prominently and in plain language, [of] the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service. VoIP providers shall obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood

¹ I am the person responsible for the Company's compliance efforts relating to E911. My title is Vice President & Chief Counsel, Telephony. My address is: Time Warner Cable, 290 Harbor Drive, Stamford, Connecticut 06902. My phone number is 203-328-0671, and my e-mail address is julie.patterson@twcable.com.

² *Enforcement Bureau Provides Guidance to Interconnected Voice Over Internet Protocol Service Providers Concerning the July 29, 2005 Subscriber Notification Deadlines*, Public Notice, WC Docket Nos. 04-36 & 05-196, DA 05-2085 (rel. July 26, 2005) ("*Public Notice*").

³ *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36 & 05-196, FCC 05-116 (rel. June 3, 2005) ("*Order*").

this advisory.”⁴ The *Order* further required providers to furnish subscribers with certain warning stickers.⁵

On July 26, 2005, the Enforcement Bureau released a *Public Notice*, in which it stated that “it will not initiate enforcement action, until August 30, 2005, against any provider of interconnected VoIP service regarding the requirement that it obtain affirmative acknowledgement by every existing subscriber on the condition that the provider file a detailed report with the Commission by August 10, 2005”⁶ The Bureau stated that the report must include: (1) a description of actions taken to advise subscribers; (2) a quantification of how many subscribers have submitted an acknowledgement and an estimate of the percentage of subscribers that will not do so by August 29; (3) a description of efforts to furnish subscribers with warning stickers; (4) a quantification of how many subscribers were not sent an advisory; (5) a description of actions planned towards subscribers that do not submit an acknowledgement; (6) a description of the way in which acknowledgements are maintained; and (7) a designation of a person responsible for compliance efforts.⁷ This letter contains Time Warner Cable’s report.

Using its own upgraded hybrid fiber-coaxial cable-television facilities, Time Warner Cable provides an IP-based voice service under the brand name “Digital Phone.” Time Warner Cable began providing Digital Phone service more than two years ago in select operating divisions. It now provides the service throughout its footprint. As of June 30, 2005, Time Warner Cable had approximately 614,000 Digital Phone subscribers.

When subscribers order Digital Phone service, Time Warner Cable dispatches professional technicians to install an embedded multimedia terminal adapter (or “eMTA”), which is a voice-enabled cable modem that contains an RJ-11 outlet. Like traditional cable modems, eMTAs are powered by electricity drawn from a standard power outlet at the customer’s premises. Time Warner Cable’s eMTAs do, however, contain a battery back-up that is good for at least four hours of service.

Unlike IP-based voice services that use the public Internet, Digital Phone is not intended to be a “nomadic” service. This is not simply a matter of Time Warner Cable’s terms of service, which prohibit customers from moving the eMTA.⁸ It is also due to the nature of Time Warner Cable’s Digital Phone service, which is designed not to be used in connection with the Internet, but

⁴ *Id.* ¶ 48.

⁵ *See id.*

⁶ Public Notice at 2.

⁷ *Id.* at 2-3.

⁸ *See* Time Warner Cable Digital Phone Subscription Agreement, § 2(i) (“Transfer of . . . the Operator’s Equipment by Subscriber to any other person or entity, or to a new residence or other location, is prohibited.”).

rather to work over Time Warner Cable's cable-television facilities. Indeed, in virtually all cases, Time Warner Cable's eMTAs simply will not function if moved.⁹

Since launching Digital Phone service in early 2003, Time Warner Cable has ensured that Digital Phone service has included Enhanced 911 capabilities. This E911 service is provided by sending automatic number information ("ANI") and automatic location information ("ALI") directly to public safety answering point ("PSAP") emergency dispatchers over the existing wireline 911 network. In addition, Time Warner Cable does not begin providing Digital Phone service to subscribers in a given area unless and until the E911 service is tested and certified by the local PSAP.

Because it uses the existing wireline 911 infrastructure, Time Warner Cable's E911 service is virtually identical to that provided by incumbent LECs. Unlike the twisted copper wire used by incumbent LECs, however, the fiber and coaxial wire used in Time Warner Cable's systems does not carry power. Thus, a commercial power failure can cause eMTAs to stop functioning,¹⁰ though Time Warner Cable's eMTAs do have at least four hours of battery back-up power. In addition, power outages may affect some of the equipment between the subscriber and the head-end (because not all such equipment has back-up power), but that is true with respect to incumbent LEC networks as well.¹¹

Since Time Warner Cable first launched Digital Phone service, it has provided subscribers with appropriate advisories. *First*, each subscriber is furnished, at the time of installation, with a printed copy of the Time Warner Cable Subscriber Agreement, which includes clauses in which E911 issues are specifically addressed.¹² *Second*, it is Time Warner Cable's policy that, at the time

⁹ The only exception is that eMTAs may work in the limited circumstance where a customer would move them to the premises of another Time Warner Cable customer served off the same node. Such moves, however, would violate the Subscriber agreement.

¹⁰ This is also the case with cordless telephones used by many subscribers to traditional telephone service.

¹¹ Network equipment can also fail for other reasons. For example, fiber-related electronic equipment may stop functioning due to hardware or software failure, even while power is alive. But, again, that is true of incumbent LEC equipment as well.

¹² See Time Warner Cable Digital Phone Subscription Agreement, § 2(d) ("Subscriber expressly acknowledges that the Digital Phone Service does not have its own power source and will not be available without an independent power supply and that, under certain circumstances, including if the electrical power and/or Operator's cable network or facilities are not operating, the Digital Phone Service, including the ability to access emergency 911 services, will not be available."); *id.* § 2(i) ("Transfer of all or a portion of the account, the Digital Phone Service or the Operator's Equipment by Subscriber to any other person or entity, or to a new residence or other location, is prohibited. Subscriber expressly acknowledges that the address associated with an emergency 911 call is the authorized address where the Digital Phone Service was originally provided and that movement of the voice-enabled cable modem from the original service location will result in the identification of emergency 911 calls from the original service location. Access to

of installation, service technicians must require subscribers to sign a work order that includes, prominently and in plain language directly above the signature line, a notice that Digital Phone service, including the ability to access E911 service, will not be available in the event of a power or network failure.¹³ By signing the work order, the Digital Phone subscriber also acknowledges having received the Subscriber Agreement.¹⁴ *Third*, whether they sign up via telephone, over the Internet, or in person, all new Digital Phone subscribers are informed that Digital Phone service may not be available in case of a power outage. *Finally*, Time Warner Cable's websites and other marketing materials contain E911-related advisories.¹⁵

Based on these policies and practices, Time Warner Cable believes that it has already notified, and obtained the affirmative acknowledgement of, each of its existing Digital Phone subscribers as to the terms and conditions regarding Time Warner Cable's provision of E911 service.¹⁶ Nevertheless, out of an abundance of caution — and in light of the Commission's *Order* and the important public policy interests involved in ensuring that voice customers understand the nature of the E911 that they receive — Time Warner Cable has undertaken the following additional steps to remind subscribers of these matters:

- * By August 20, 2005, Time Warner Cable will have completed a mailing campaign in which it is sending all of its Digital Phone subscribers, on a rolling basis, a letter providing fresh advisories concerning E911 service and requesting them affirmatively to acknowledge their receipt and understanding of the advisory.
- * This mailing also includes E911-related warning stickers, which had not been required at the time that Time Warner Cable signed up most of its current Digital Phone subscribers.

emergency 911 services will therefore be limited if the voice-enabled cable modem is moved from the original service location.”).

¹³ Specifically, the work order states as follows: “[M]y signature on this work order indicates that I have received and agreed to Section 2(d) of the Digital Phone Subscription Agreement, which has informed me that the Digital Phone Service does not include an independent power source and that, if the electrical power and/or Time Warner Cable's network are not operating, the Digital Phone Service, including the ability to access emergency 911 services, will not be available.”

¹⁴ Copies of these work orders are maintained by local Time Warner Cable operating divisions in accordance with Time Warner Cable's records management and maintenance policies.

¹⁵ See, e.g., Time Warner Cable Inc., *Digital Phone FAQs*, at <http://www.timewarnercable.com/CustomerService/FAQ/TWCFaqs.ashx?faqID=1163&MarketID=0&CatID=637> (“Please note that Digital Phone service does not include back-up power. As in the case with a cordless phone, should there be a power outage, Digital Phone service, including the ability to access 911 services, will not be available until the power is restored.”).

¹⁶ In light of these consents, Time Warner Cable does not believe that there is cause to take further action, such as disconnecting service, with respect to any of its Digital Phone subscribers.

- * Time Warner Cable has sent to all subscribers for whom it has a valid e-mail address on file an electronic version of the E911 notifications, which directs subscribers to a toll-free telephone number or website to submit their acknowledgement.
- * Time Warner Cable has begun a telephone calling campaign to advise each of its subscribers of the E911 service issues, to ensure that they have received warning stickers and E911 notices, and to request additional acknowledgements from subscribers.¹⁷
- * With respect to new subscribers, Time Warner Cable is continuing to adhere to the policies explained above and is implementing a new policy of distributing warning stickers at the time of installation.

Please contact me if I can be of assistance with additional information.

Respectfully submitted,

/s/

Julie Y. Patterson

Copies by e-mail to:

- Byron McCoy, Telecommunications Consumers Division, Enforcement Bureau, byron.mccoy@fcc.gov;
- Kathy Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, kathy.berthot@fcc.gov;
- Janice Myles, Competition Policy Division, Wireline Competition Bureau, janice.myles@fcc.gov;
- Best Copy and Printing, Inc. (BCPI), fcc@bcpiweb.com.

¹⁷ Copies of all of the foregoing subscriber acknowledgement records — including telephonic and e-mail acknowledgements — will be maintained by local Time Warner Cable operating divisions in accordance with Time Warner Cable's records managements and maintenance policies.